



Civil Resolution Tribunal

Date Issued: May 3, 2019

File: ST-2018-006685

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS 749 v. Seven Wells Pictures Inc.*

2019 BCCRT 525

B E T W E E N :

The Owners, Strata Plan LMS 749

APPLICANT

A N D :

Seven Wells Pictures Inc.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. The applicant, The Owners, Strata Plan LMS 749 (strata), is a strata corporation existing under the *Strata Property Act* (SPA). The respondent, Seven Wells Pictures

Inc., owns strata lot 13 (SL13) in the strata. The strata is represented by a member of its strata council. The owner is represented by Dina Goldstein, a director or officer of Seven Wells Pictures Inc. For ease of reference, I will refer to both Seven Wells Pictures Inc. and Dina Goldstein as “owner”, unless otherwise noted.

2. The strata alleges that Ms. Goldstein breached its parking and storage bylaws. The strata seeks orders that the owner pay the strata \$1,462.36 for what it says are outstanding bylaw fines and that Ms. Goldstein stop improper parking in the loading area and “no parking” zones of the strata’s common garage, stop using common areas of the garage to store personal items.
3. The owner says it paid some of the fines and that, as a non-residential strata lot owner, it has been treated differently and unfairly than other owners. The owner says Ms. Goldstein will continue to need to use the loading area to move equipment between SL13 and her vehicle and that it is not responsible for the outstanding fines claimed by the strata.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 121 of the *Civil Resolution Tribunal Act (Act)*. The tribunal’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
6. The tribunal may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in a

court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

7. Under section 123 of the Act and the tribunal rules, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUES

8. The issues in this dispute are:
 - a. Is the strata entitled to payment of \$1,462.36 for alleged outstanding bylaw fines?
 - b. Should I order the owner to stop parking in the loading area and stop storing personal items in the common parking garage?

BACKGROUND, EVIDENCE AND ANALYSIS

9. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
10. In a civil proceeding such as this, the applicant strata must prove its claims on a balance of probabilities.
11. The strata was created in 1993 and is a mixed-use strata corporation located in Vancouver consisting of a total of 12 strata lots in a single building. The basement level comprises a common property parking garage and 4 non-residential strata lots. The upper 2 levels of the building comprise 8 2-storey residential strata lots. There are no separate sections.
12. When the strata was first constructed, there was only 1 non-residential strata lot (SL9) located on the basement level. The strata plan shows SL9 was subdivided in 1994 to create strata lots 10 (SL10) and 11 (SL11). Each of SL10 and SL11 were

subdivided in 2004 to create strata lots 12 and 13, and strata lots 14 and 15 respectively.

13. The owner purchased SL13 on August 11, 2016. The owner's representative is an artist and uses the space for their work. They do not reside in the strata.
14. I infer from the parties' submissions that SL13 is not accessible from the main entrance to the building and that the only way to access SL13 is through the parking garage.
15. The parking garage itself consists of 9 common property parking stalls and I find it is more than likely that parking stall 9, that forms part of this dispute, was originally used by SL9. However, likely because of the subdivision of SL9 into 4 strata lots, the 4 non-residential strata lots have no designated parking stall as the parties agree. In fact, the photographs show parking stall 9 as being a "no parking" area as evidenced by the stall being marked with yellow cross-hatched painted lines with the words "no parking" painted in the stall.
16. The photographs also show the words "no parking" are painted on the floor of the garage to either side of the access door to SL13 and in front of parking stall 9 which I infer is access to strata lots 14 and 15 and to a common property stairwell shown on the strata plan. However, I note the painted "no parking" on the garage floor between the SL13 entrance door and the parking entrance does not show in all photographs provided for that area, as it appears from the evidence that some additional "no parking" areas were labelled as such over the course of this dispute.
17. As for storage, the strata plan does not show any common property storage area but the photographs provided show items stored behind fencing or metal bars at the head of some of the parking stalls.
18. The strata bylaws in effect at the time of this dispute were those registered at the Land Title Office (LTO) on February 29, 2016. LTO documents show the strata repealed all previously filed bylaw amendments, including the Standard Bylaws under the SPA, and replaced them with February 29, 2016 amendments. One bylaw

amendment was filed on June 15, 2017, which relates to video surveillance and key fob systems, but the amendment is not relevant to this dispute.

19. The relevant bylaws to this dispute are:

- a. Bylaw 1 requires owners to pay strata fees on the first day of every month, failing which the strata may charge interest on the outstanding strata fees at a rate of 10% per annum compounded monthly and a \$50 per month fine.
- b. Bylaw 3(1) states, among other things, an owner, tenant, occupant or visitor must not use a strata lot or common property in a way that:
 - i. causes a nuisance or hazard to another person,
 - ii. unreasonably interferes with the rights of another person to use and enjoy common property, or
 - iii. is contrary to a purpose for which the strata lot or common property is intended to be used as shown on the strata plan.
- c. Bylaws 6 and 7 require an owner to obtain the prior written permission of the strata before altering common property and that, if the alteration is approved, the strata may require the owner to sign an “Assumption of Liability Agreement”. Bylaw 7 also sets out the authority of the strata to address unauthorized alterations, among other matters.
- d. Bylaw 34(1) states “Only those areas designated by council for storage from time to time may be used for that purpose.”
- e. Bylaw 35 governs the use of the parking garage by owners, tenants, occupants and approved visitors and includes:
 - i. permission for a vehicle to park in a “loading zone” provided a “working contact phone number is clearly displayed” with the vehicle owner available and ready to move their vehicle “at all times”.

- ii. A prohibition for “emergency access lanes” to be obstructed by a vehicle.

Is the strata entitled to payment of \$1,462.36 for alleged outstanding bylaw fines?

20. While the strata asks for payment bylaw of fines totalling \$1,462.36, I find that based on the November 14, 2018 account summary provided to the owner that was included in the evidence, the claimed amount also includes interest and is broken down as follows:

- a. \$50.00 bylaw fine for altering common property without permission, relating to a neon sign,
- b. \$250.00 in bylaw fines for parking violations,
- c. \$400.00 in bylaw fines for violation of the storage or use of property bylaws, relating to a wooden crate,
- d. \$750.00 in strata fee late payment fines, and
- e. \$12.36 in interest for late payment of strata fees.

21. I will address each in turn as I find it necessary to provide the circumstances relating to the separate fines imposed by the strata.

The Legislation

22. Section 135(1) of the SPA states that a strata corporation may not impose a fine against a person for a bylaw contravention unless it has received a complaint, given the owner or tenant written particulars of the complaint and a reasonable opportunity to answer the complaint, including a hearing if requested. The requirements of section 135(1) must be strictly followed before a fine can be imposed as set out in *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449.

23. Section 135(2) of the SPA requires a strata corporation to notify the person identified in section 135(1) in writing of its decision “as soon as feasible”.

24. Section 135(3) requires a strata corporation to complete the procedures set out in subsections 1 and 2 before it may impose a fine. As the court found in *Terry*, bylaw fines may be found to be invalid if a strata corporation does not fully comply with section 135.

Common property alterations - signage fines

25. For the reasons that follow, I find the strata is entitled to payment of the \$50 fine imposed for the owner's sign installation.

26. On about August 23, 2017, the owner's representative arranged for an electric neon sign that spells "studio" to be installed above the entrance to SL13. The installation involved drilling a hole for electrical wires through the concrete wall separating SL13 from the parking garage.

27. On August 25, 2017, the strata advised the owner that the sign installation was completed contrary to bylaw 6 because the owner did not first seek the strata's authorization to install the sign. The strata asked the owner to request permission for the sign installation by September 5, 2017. The owner responded but did not request permission to stall the sign.

28. At a council meeting held September 20, 2017, the strata approved the sign installation subject to the owner providing a completed indemnity agreement, providing a signed acknowledgement that it understood the strata bylaws, and paid a \$200.00 fine for installing the sign without authorization. The owner provided a written request for the sign installation along with a hearing request to discuss the amount of the fine.

29. A council hearing was held on October 23, 2017. In a letter dated November 3, 2017, the strata agreed to reduce the amount of the fine to \$50 and approved the installation subject to receiving the fine, the completed liability agreement, and bylaw signoff request. The strata says the owner has provided the agreement and bylaw signoff but has not paid the \$50 fine. The owner does not dispute this and the sign has not been removed.

30. In the circumstances, I find the September 20 and October 23, 2017 letters comply with the procedural requirement of section 135 of the SPA and that the fine has been validly imposed. I order the owner to pay the \$50 fine relating to the sign installation within 30 days of the date of this decision. If the owner does not pay the fine, the strata may remove the sign and charge the cost of removal to the owner.

Parking fines

31. On March 22, 2017, the strata wrote to the owner about storage and parking. The strata advised the owner would be fined \$50 each time Ms. Goldstein parked her vehicle in the “driveway lane” unless she was actively loading or unloading her vehicle. The term “driveway lane” was not defined in the letter nor is it defined in the bylaws. While I could make a common-sense inference that “driveway lane” means the garage area that does not include parking stalls or loading zones, I find loading zones are not clearly distinguished in the bylaws or physically in the garage as discussed below.

32. Although the March 22, 2017 letter references section 135 of the SPA, I find it was only a warning letter as the strata did not state it was considering a fine for any bylaw infraction. Even if the March 22 letter did comply with section 135 of the SPA, I do not find the fines imposed can be considered to be fines for continued contravention of the same bylaw given the amount of time that passed between the letter being issued in March and when the fines were imposed, in October as discussed below.

33. The disputed parking infractions occurred between October 2017 and July 2018 and resulted in fines totaling \$250.00 being imposed against the owner.

34. On October 30 and November 23, 2017, the strata wrote similar letters to the owner imposing a \$50.00 fine for “random parking in front of fire exit doors and in non-parking areas.”

35. On April 3, 2018, the strata wrote to the owner advising another \$50.00 fine had been imposed because of a visitor of Ms. Goldstein parking in the parkade without clearly displaying a contact number contrary to the strata's bylaws.
36. On July 18, 2018, the strata again wrote to the owner advising of fines of \$100.00 (2 \$50.00 fines for improper parking in the garage on July 12 and 15, 2018) has been imposed for "random parking in front of fire exit doors and in non-parking areas."
37. In all cases, the parking fines were imposed before the owner was given the opportunity to respond, contrary to section 135 of the SPA. For this reason, I dismiss the strata's claim for \$250.00 in parking bylaw fines.
38. I also note the emails exchanged between the parties provided further particulars of the alleged violations that differed from the letters. For example, in an email dated November 2, 2017, the strata had fined the owner but stated unloading and loading was permitted "in front of her unit for short periods of time" which contradicts the alleged October 30, 2017 violation. Further, the April 3, 2018 complaint was that the visitor's vehicle was parked in the fashion that it impeded access to parking stalls but the letter imposed a fine for not displaying contact information.

Storage fines

39. For the reasons that follow, I find the strata was not entitled to impose the \$400.00 bylaw fines for storage that relate to the owner's crate.
40. The parties provided background information on both the storage and parking issues that included a meeting with council members and non-residential strata lot owners on January 20, 2017. The minutes show that Ms. Goldstein had requested the use of the common property garage as place to store her belongings which were currently located in the garage next to the entrance to SL13. I will address the parking issues below but note that as a condition of permitting use of stall 9 for the non-residential owners, Ms. Goldstein was required to remove the items she had stored in the garage, which she did.

41. On about March 7, 2018, the owner received a large wooden crate Ms. Goldstein says contained her framed pictures. By email on March 8, 2018, Ms. Goldstein notified the strata of the crate's arrival stating it weighed over 800 pounds. She advised that the crate would need to remain in the garage until she had time to unpack it, which she said estimated would take about a week.
42. By email on March 9, 2018, the strata council advised Ms. Goldstein that the area where the crate was located, outside the entrance to SL13, was to be used for loading and unloading and that storage of items in the area was contrary to the bylaws. The email gave the owner until March 15, 2018 to have the crate removed. Ms. Goldstein replied by email on the same day advising she would need until March 17, 2018 remove the crate. The strata replied on the same day stating that the March 15' 2018 deadline was "ample" time to have the crate unloaded and removed but to contact the strata if there were extenuating circumstances. I do not find the email communications from the strata met the requirements of section 135(1) as they did not provide the owner with any opportunity to respond to the complaint. Rather, I find the strata simply accepted the owner's position that time was needed to unload and remove the crate.
43. On March 15, 2018, Ms. Goldstein advised the strata she would need another week to 'arrange for suitable storage" for her crate. On the same day, the strata responded by email referring the owner to an attached letter from its property manager and stating that personal storage of a large item is not authorized to be stored on common property, and that the crate is being stored in an area dedicated for active loading and unloading is also "impinging access" to parking stalls 7 and 8. The strata said the deadline given the owner had lapsed and that further fines may result if the contravention continued after 7 days.
44. The property manager's March 15, 2018 letter stated the continued storage of the crate was in violation of bylaw 3(1) as it created a nuisance or hazard to another person, unreasonably interfered with the use of common property and was contrary to a purpose for which the common property was intended to be used as shown on the strata plan. The letter stated a \$200 fine had been imposed.

45. In her March 21, 2018 email response, the owner objected to the \$200 fine and advised she would need further time to find someone to remove the crate.
46. On March 22, 2018, the strata's property manager wrote to the owner referencing its March 15, 2018 letter stating a further \$200 fine had been imposed.
47. Given the March 15 and 22, 2018 letters from the property manager imposed \$200.00 fines on the dates of the letters, without providing the owner an opportunity to respond to the complaint or request a hearing, I find the strata did not comply with section 135(1) before fining the owner.
48. As for the strata's reference to a "further \$200 fine", the March 22, 2018 letter could not have cured the section 135 defect of the March 15, 2018 because the BC Supreme Court has found that continuing fines under section 135(3) of the SPA are invalid if section 135(1) has not been followed in the first place, which is the case here. (See *Dimitrov v. Summit Square Strata Corp.*, 2006 BCSC 967 at paragraph 33.)
49. I therefore dismiss the strata's claim for payment of \$400.00 for fines relating to the owner's crate.

Late payment fines and interest

50. The strata claims \$750 in fines for late payment of strata fees under bylaw 1.
51. Fines relating to late payment require the same process as any other bylaw fine under section 135 of the SPA. Based on my review of the statement for SL13, the strata imposed the fines on a monthly basis for the months when strata fees were allegedly not paid on the first day of the month. The strata provided no evidence supporting the fines imposed, such as letters to the owner as required under section 135. The owner also provided no submissions on the subject. There were copies of emails and correspondence provided that confirm the strata advised the owner of the outstanding balance of SL13's account which included late payment fines, but that correspondence does not comply with section 135 of the SPA.

52. Therefore, I find the strata has not proven the late payment bylaw fines were imposed in accordance with the SPA. Accordingly, I dismiss the strata's claim for \$750.00 in late payment fines.
53. As for the strata's claimed interest charges of \$12.36, section 107(1) of the SPA permits a strata corporation to charge interest for late payment of strata fees if it has a bylaw that establishes a schedule for payment of strata fees and if such a bylaw establishes a rate of interest an owner must pay if they are late paying strata fees. *Strata Property Regulation* 6.8 limits the rate of interest to 10% per annum compounded annually.
54. Section 107(2) of the SPA states that interest charged under section 107(1) is not a fine.
55. I find that strata's bylaw 1 complies with section 107 of the SPA. Given interest is not a fine, section 135 of the SPA does not apply. There is email evidence that supports the strata's claim the owner was late in paying strata fees including an email from Ms. Goldstein admitting she was late and that she would immediately pay outstanding strata fees. Further, there is also email evidence dated July 17, 2018 the strata notified the owner it owed interest for late payment of strata fees.
56. Based on the overall evidence, I find the owner was late in paying strata fees and that the strata is entitled to payment of \$12.36 under its bylaw 1. I order the owner to pay the strata that amount within 30 days of the date of this decision.

Should I order the owner to stop storing personal items in the common parking garage and stop parking in the loading area?

57. The owner submitted a copy of municipal parking bylaw 6059 and suggests the bylaw requires the strata to provide a loading space for the owner's use. In reviewing the bylaw, I find there is no requirement for a loading space if the total area for office use is less than 500 square metres. The minimum area is larger for other non-residential identified uses. The strata plan shows the total area for all 4 non-residential strata lots is about 385 square metres. As this is less than the

minimum area identified in the municipal bylaw, I find the municipal bylaw does not apply the strata or this dispute. That does not mean the strata should not try to accommodate the owner, especially considering the entrance to SL13 is gained through the garage.

58. I find that the strata's bylaws are not sufficiently clear on common property storage or parking matters that form the substance of this dispute.
59. As I have noted, bylaw 34(1) states "Only those areas designated by council for storage from time to time may be used for that purpose." I find this bylaw to be vague and ambiguous, given common property storage locations are strictly at the discretion of the strata, which could theoretically change at any time. As support to my conclusion, the strata required the owner to remove items stored in the garage next to the entrance to SL13 before it permitted the non-residential owners temporary shared use of parking stall 9. The strata made this decision even though the previous SL13 owner provided a written statement saying they were not asked to remove items they stored in the same location. Arguably, the strata could unreasonably authorize storage on common property for one owner but not another, which could lead to unfairness issues.
60. Having said that, I acknowledge that short term exclusive use of common property is at the discretion of the strata and that no owner may have exclusive use of or special privilege over common property (for periods up to 1 year) without the permission of the strata under section 76 of the SPA. Therefore, I am prepared to grant the order requested by the strata modified to reflect that the owner stop storing personal items in the garage, without the prior written permission of the strata and I so order.
61. As for parking in the garage and using it for loading or unloading, bylaw 35 clearly permits parking in "loading zones" but does not identify these areas nor the length of time loading and unloading is permitted. Further, "loading zones" and "emergency access lanes" are defined in the bylaws and neither are physically identified in the garage. I find there is no clear distinction between "loading zones" and "emergency

access lanes.” Given the bylaws permit parking in loading zones but prohibit it in emergency access lanes, I suggest enforcement of the parking bylaw would be difficult even if the strata did comply with section 135 of the SPA before imposing fines.

62. I appreciate Ms. Goldstein’s frustration and that she believes she is being treated unfairly, but there is no evidence to suggest other owners, particularly non-residential strata lot owners, are being treated any differently. Clearly however, parking of non-resident owners’ vehicles is not permitted in the garage, except possibly in stall 9.
63. Therefore, I order the owner stop parking in the garage, subject to the proper use of any loading areas that may be reasonably identified and properly approved by the strata, and the shared use of parking stall 9 as permitted by the strata, acting reasonably.
64. I would encourage the strata to consider seeking professional advice on amending its bylaws, particularly those addressing storage and parking, to properly address the unique circumstances that some of the non-residential strata lots, including SL13, only have access to the strata lot through the garage.
65. Nothing in this decision restricts the owner from bringing claims for significant unfairness with respect to common property storage and parking issues that might result from future actions of the strata.

TRIBUNAL FEES AND EXPENSES

66. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I find the both parties were partially successful and I therefore decline to order reimbursement of tribunal fees or dispute-related expenses to either party.

67. The strata must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owner.

DECISION AND ORDER

68. I order that:

- a. Within 30 days of the date of this decision, the owner pay to the strata \$62.36, broken down as follows:
 - i. \$50.00 in bylaw fines for altering common property for the neon sign without permission about a neon sign, and
 - ii. \$12.36 in interest for late payment of strata fees under the strata's bylaws.
- b. If the owner does not pay the \$50.00 fine within the 30-day period, the strata is entitled to remove the sign and repair the common property at the owner's expense.
- c. The owner immediately stop:
 - i. storing personal items in the garage, without the written permission of the strata, and
 - ii. parking in the garage, subject to
 - I. the proper use of any loading areas that may be reasonably identified and properly approved by the strata, and
 - II. the shared use of parking stall 9 as permitted by the strata, acting reasonably.

69. The strata is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.

70. The strata's remaining claims are dismissed.

71. Under section 57 of the Act, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia, a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time

for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.

72. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia. However, the principal amount or the value of the personal property must be within the Provincial Court of British Columbia's monetary limit for claims under the *Small Claims Act* (currently \$35,000). Under section 58 of the Act, the Applicant can enforce this final decision by filing in the Provincial Court of British Columbia a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

J. Garth Cambrey, Vice Chair